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**IN THE
COURT OF APPEALS OF INDIANA**

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlise, Judge
The Honorable William Robinette, Master Commissioner
Cause No. 49G03-0704-FC-071550

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Following a bench trial, judgments of conviction were entered against Carl Walker (Walker) upon Count I- Burglary as a Class C felony, Count II – Theft as a Class D felony and Count III- Possession of Paraphernalia as a Class A misdemeanor. In addition, Walker pleaded guilty to being a habitual offender.

The trial court sentenced the defendant to six years upon the C felony enhanced by four years upon the habitual offender determination. Six of those ten years were to be executed with four suspended. In addition, a one-year concurrent sentence was imposed for the misdemeanor conviction. The court stated that the theft conviction was “merged” into the burglary conviction and did not sentence Walker for the theft.

It is unclear what the trial court’s rationale was for wishing to “merge” the theft conviction with the burglary conviction. See Vestal v. State, 773 N.E.2d 2002 (Ind. 2002). However, where there has been a judgment of conviction on two counts a purported “merger” of one such conviction into the other, upon double jeopardy considerations, is inadequate. Clark v. State, 752 N.E.2d 209 (Ind. Ct. App. 2001), trans. denied. Be that as it may, it is apparent that it was the intention of the court to not sentence Walker for both crimes and that he did not wish to punish Walker for the theft. Accordingly, we instruct the court to vacate the theft conviction in keeping with prior case law. See Morrison v. State, 824 N.E.2d 734 (Ind. Ct. App. 2005).

Walker appeals, presenting issues with respect to the sufficiency of the evidence upon his burglary conviction¹ and asserting that the court failed to give a “reasonably detailed recitation” for imposing the sentences.

I. Burglary- Sufficiency of Evidence

Walker claims that the front door of the house was open and that he merely entered to look for a friend. He denied having entered the structure through a broken basement window, ever having been in the basement, or that he told arresting officer Wuensch that he entered with the intent to steal copper piping from the house. This version of events directly contradicts the testimony of an eyewitness who had been hired to remodel the house. The witness said that he saw Walker sliding feet first through the basement window. He kept the house under observation and called police.

When police arrived, Officer Wuensch saw Walker’s hands, covered in dirt, reaching out from the same basement window. When challenged, Walker retreated and was then seen on the roof. The officers then entered through an open back screen door which had earlier been locked and found Walker on a stairway where he was arrested. Walker told Officer Wuensch that he had entered through the basement window in order to steal copper pipes to sell at a scrap yard.

In the basement, the police found a duffel bag with copper pipes inside.

¹ Because we direct the trial court to vacate the theft conviction there is no reason to address Carter’s argument concerning the sufficiency of the evidence upon that charge. See Fry v. State, 748 N.E.2d 369 (Ind. 2001).

Walker denied that the duffel belonged to him and although he was in possession of a pair of pliers he denied using them to crimp the copper tubing and remove it from the structure. Walker asserts that Officer Wuensch's testimony was false.

Walker's entire argument is no more than a request for us to reweigh the evidence and to believe his story as opposed to the eyewitness and Officer Wuensch. We decline to do so. See Drane v. State, 867 N.E.2d 144 (Ind. 2007). We hold that the evidence was clearly sufficient to support the judgment upon the burglary charge.

II. Adequacy of Sentencing Statement

Walker contends that the sentencing statement by the trial court does not contain a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence" as required by Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). The State concedes the requirement of Anglemyer but asserts that although not "a fulsome (sic)² sentencing statement" it is adequate because the court obviously considered counsel's arguments as to Walker's criminal history, his character, and the nature of the offense. The State requested the maximum eight-year sentence on the Class C burglary and one-year concurrent on the Paraphernalia Possession. The Court imposed a six-year sentence on the burglary enhanced by four years for the habitual determination. It then suspended four years of the enhanced burglary, for an executed six-year sentence.

² The word is no doubt used as a synonym for copious or abundant.

Under the circumstances of this case and the context of the trial court's sentencing colloquy with counsel, we hold that the sentencing record is adequate for our appellate review. In this determination, we note that unlike the court in Marlett v. State, 878 N.E.2d 860 (Ind. Ct. App. 2007), the court here did not impose the maximum felony sentence.

Additionally, we do not find that under Indiana Appellate Rule 7(B) the sentences are inappropriate in light of the nature of the offenses and the character of the offender. Except as to the judgment of conviction upon the theft charge, the judgment is, in all other respects, affirmed.

MAY, J, and MATHIAS, J., concur.